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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Honorable Harris Wofford
United States Senate
283 Russell Senate Office Building
Washington, D.C. 20510

93-253

Dear Senator Wofford:

This in reply to your letter of October 15, 1993, on behalf of your constituents, Mr. Max L. William W. Fiske, II. Mr. Fiske is concerned about the impact of the Omnibus Budget Reconciliation Act of 1993 (Budget Act) on the Multichannel Multipoint Distribution Service (MMDS). Your letter was referred to me because the Office of Plans and Policy is responsible for implementing the competitive bidding provisions of the Budget Act.

President Clinton signed the Budget Act on August 10, 1993. The Budget Act affected the Commission by, among other things, limiting the Commission's lottery authority and granting the Commission authority to conduct auctions of the spectrum (competitive bidding). Further, the Budget Act permits the Commission to conduct lotteries for radio service applications that were accepted for filing prior to July 26, 1993. For example, because the Commission accepted IVDS applications for nine service areas prior to July 26, 1993, the Commission conducted a lottery for such service areas on September 15, 1993, as the Commission previously announced in a Public Notice, DA 93-935 (July 23, 1993).

In addition, the Budget Act, signed August 10, 1993, provided the Commission with 210 days from its date of enactment, or March 8, 1994, to issue final rules concerning competitive bidding. Accordingly, on September 23, 1993, the Commission initiated a rule making proceeding to implement the competitive bidding provisions of the Budget Act. Notice of Proposed Rule Making (Notice), PP Docket 93-253 (released October 12, 1993). The NPRM proposed, among other things, to subject future MMDS applications to competitive bidding. The Notice also requested comment on whether to lottery or auction MMDS applications received prior to July 26, 1993. In addition, the Commission proposed certain investment incentives, such as installment payment plans with interest, for small businesses and other entities designated by the Budget Act in order to ensure their economic opportunity under a system of competitive bidding. The public, including your constituents, had an opportunity to participate in this proceeding during the comment period that closed November 30, 1993. I can assure you that the Commission will give full consideration to all comments filed in the competitive bidding rule making proceeding.

Sincerely,

Robert Pepper
Chief
Office of Plans and Policy

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HARRIS WOFFORD
PENNSYLVANIA

United States Senate

WASHINGTON, DC 20510-3803

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October 15, 1993

Lauren J. Belzin
Acting Director, Office of Legislative Affairs
Federal Communications Commission
Room 808
1919 M Street, N.W.
Washington, D.C. 20554

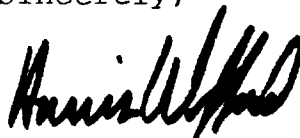
Dear Ms. Belzin,

The attached correspondence from William W. Fiske, II is submitted for your consideration, and to ask that the points therein be reviewed.

If you will advise me in writing of your action in this matter and have the letter returned to me with your reply, I will be most appreciative.

In responding, please direct your reply to: **Senator Harris Wofford, 9456 Federal Building, 600 Arch Street, Philadelphia, PA 19106, Attention: Iris Lozada.**

Sincerely,



Harris Wofford

HW/il
Enclosure

WILLIAM W. FISKE, II
P.O. Box 247, Main Office
Villanova, Pennsylvania 19085

PH 114

July 13, 1993

JUL 27 1993

Honorable Harris Wofford
U.S. Senate
283 Russell Building
Washington, D.C. 20510

Dear Senator Wofford:

As a person engaged in operating a small business, I am in immediate need of your assistance on the critical matter of Congressional authorization for the FCC to auction spectrum. The auction authority will soon be reviewed in the House-Senate budget reconciliation conference.

I am an applicant for channels in the multichannel multipoint distribution service ("MMDS") to operate a wireless cable station. Wireless cable operators start out at a disadvantage in the marketplace because they must aggregate multiple licenses to make an even minimally viable wireless cable system. To make matters worse, MMDS applications filed with the FCC as long ago as 1983 have not yet been granted. Now, Congress proposes to change the rules and require this cash-strapped industry to come up with even more capital investment to bid competitively for facilities which must compete with conventional cable, already so well entrenched in the marketplace.

Clearly, the rules are being changed very late in the game. I believe this unfair result is inadvertent, but under the House and Senate budget bills, the long ago announced procedure for selecting licensees in MMDS by lottery will be cast aside in favor of an auction scheme. While the proposal to auction spectrum may generally be a good idea, there has been no public hearing, no opportunity to accurately weigh the budget implications of auctioning MMDS spectrum. There has been no airing of the concerns of the long-suffering MMDS applicants.

The Chairman of the FCC has contacted the Congressional leadership to express concern with the broad sweep of the proposed legislation. It is estimated that each of the thousands of application fees and applications returned because of the implementation of spectrum auctioning will cost the FCC Fifty Dollars. There is absolutely no expectation that auctioning MMDS spectrum will even begin to cover the amounts expended in returning applications, let alone that it will realize gain for the Treasury.

IVDS LOTTERY EXEMPTION KEY ISSUES

I. BACKGROUND

- **SPECTRUM AUCTIONS HAVE BEEN PROPOSED TO RAISE \$7.2 BILLION FOR DEFICIT REDUCTION.** The CBO estimates that auctioning PCS (a new form of wireless telephone) licenses will easily raise the target \$7.2 billion. Industry analysts estimate that these auctions alone could raise almost twice that.
- **INTERACTIVE TELEVISION LOTTERIES, ALREADY IN PROCESS, WERE INADVERTENTLY INCLUDED IN THE AUCTION PROPOSAL.** PCS auctions make sense, especially because it is a new technology, and the spectrum allocation process was never started. The bill, however, did not exclude lotteries that were already started, including interactive television. Switching these lotteries to auctions will create many unintended negative consequences -- and no increased revenue.
- **AUCTIONS FOR INTERACTIVE TELEVISION WERE NEVER INCLUDED IN THE INITIAL ESTIMATE AND WILL FAIL TO RAISE REVENUE.** If the IVDS lotteries are exempted, the original revenue projections will still be met. On top of that, the cost of reimbursing lottery applicants is expected to completely offset any auction income.

II. HARMS OF AUCTIONING IVDS SPECTRUM

- **THE FCC IS ALREADY OVERBURDENED.** Forcing the under-staffed FCC to refund lottery applications and then develop an auction structure could delay the implementation of all new technologies by up to three years.
- **INTERACTIVE TELEVISION TECHNOLOGY WILL BE KILLED.** This delay will destroy the radio-based interactive television industry. We will not see ITV in homes until at least 1998, even though the technology is available today. If the lotteries go forward, we can have nationwide, full-service interactive television by the end of the year.
- **1,400 SMALL BUSINESSES WILL BE DESTROYED.** Assuming the lotteries were allowed to proceed today, 1,400 licensees would begin operating local interactive television companies within a few months. Under auctions, these new companies will not exist for years, if ever.
- **14,000 NEW HIGH-TECH JOBS WILL BE LOST.** Assuming each local operation employs 10 people (the most conservative estimate) 14,000 new high-wage, high-tech jobs will never be created.

III. POLITICAL RAMIFICATIONS

- **THERE IS NO POLITICAL COST TO SUPPORTING THIS ISSUE.** There is no opposing lobby to this exemption. All we are arguing is that it was an oversight to include in-process lotteries in the decision to require auctions in the future.
- **THIS PROPOSAL IS REVENUE-NEUTRAL.** Supporting an exemption for IVDS lotteries *will have no impact on deficit-reduction legislation.* IVDS was never counted in the original revenue estimates and exempting it will not affect the bottom line.
- **AN AVERAGE OF 30 BOOMING NEW HIGH-TECH BUSINESSES IN EACH STATE WILL BE GRATEFUL FOR YOUR SUPPORT.** Although small now, interactive television is expected to become a \$6 billion industry within a decade. License winners will remember your intervention on their behalf.

IV. ACTIONS

The following amendment is proposed to remedy the inadvertent consequences of including IVDS in spectrum auction legislation:

Section 408 (a) (1) (A) is amended to substitute the words "through (F)" in lieu of the words "through (E)" in the first sentence thereof.

Section 408 (a) (2) is hereby amended as follows:

(a) the words "(A) GENERAL." are inserted in front of the word "Notwithstanding" in the first line thereof.

(b) A new Section 408 (a) (2) (B) is added to read as follows:

(b) INTERACTIVE VIDEO - the authority of the Commission to have collected and to continue to collect, through the end of fiscal year 1998, Fourteen Hundred Dollars (\$1400) per application for authorization to construct and operate a new interactive video and data service station is hereby confirmed. For the purpose of this subparagraph, the term "interactive video and data service" shall have the meaning provided in 47 CFR Part 95 as of the date of enactment of this subtitle.

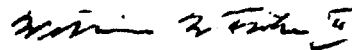
Section 408 (b) is amended to delete the word "and" at the end of sub paragraph 309 (j) (4) (E), to renumber subparagraph 309 (j) (4) (F) of the communications act of 1934 as subparagraph 309 (j) (4) (G) and to insert a new subparagraph 309 (j) (4) (F) to read as follows:

Because of the need to avoid excessive processing disruption, delays in introduction of service and refunds of filing fees, extend to (i) any license as to which mutually exclusive applications were filed and a random selection made prior to the date of enactment of the subtitle, (ii) IVDS licenses and applications have been filed prior to the date of enactment, and (iii) any other license grant where the Commission concludes that the filing fees collected (or to be collected) utilizing a random selection licensing procedure would equal or exceed the likely revenues from an auction; and

Honorable Harris Wofford
July 13, 1993
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These results can be avoided. Senators Daniel K. Inouye, a member, and Ernest F. Hollings, the Chairman of the Senate Commerce Committee and Congressmen Edward Markey, a member, and John Dingell, the chairman on the House Energy and Commerce Committee are considering steps to remedy this egregious form of discrimination among those who have received licenses and those who have not. They propose to resolve the matter in conference. I ask that you immediately contact them and urge the conferees to restore the FCC authority to complete the award of MMDS licenses by lottery.

Very truly yours,



William W. Fiske, II

/jw